

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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LIBORIA OSTRANDER,

Plaintiff,

-against-

CVS PHARMACY, INC.,

Defendant.
-----X

PETITION FOR REMOVAL

Docket No.:

Jury Trial Demanded

ECF Case

Defendant, CVS ALBANY, L.L.C. i/s/h/a CVS PHARMACY, INC., petitioner for the removal of this action from the Supreme Court of the State of New York, County of Nassau, to the United States District Court, Eastern District of New York, respectfully show this Honorable Court:

FIRST: Plaintiff commenced an action against the above-named defendant in a Civil Action brought against it in the Supreme Court of the State of New York, County of Nassau, entitled:

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU

-----X
LIBORIA OSTRANDER,

Plaintiff,

-against-

CVS PHARMACY, INC.

Defendant.
-----X

Index No.: 603049/2022

A copy of the Summons and Complaint in this action is annexed hereto as **Exhibit “A”** and made a part hereof. Upon information and belief, the foregoing constitutes all process,

pleadings and orders allegedly served upon the parties in this action. Plaintiff purportedly served the Summons and Complaint

SECOND: This is an action of civil nature in which the District Courts of the United States have been given original jurisdiction in that there exists diversity of citizenship between the plaintiff and the defendant and the amount in controversy exceeds the sum of \$75,000.00 exclusive of interests and costs. Accordingly, there exists jurisdiction in the District Court of the United States as provided in 28 U.S.C. §1332.

THIRD: Under the provisions of 28 U.S.C. §1441, the right exists to remove this civil action from the Supreme Court of the State New York, County of Nassau to the United States District Court for Eastern District of New York, which embraces the place where this action is pending. In the Complaint, Plaintiff Liboria Ostrander seeks judgment as a result of personal injuries allegedly sustained as a result of an accident that allegedly occurred on July 8, 2021 at the premises located at 633 Merrick Road, Lynbrook, New York 11563, in which plaintiff sustained severe injuries.

FOURTH: The action involves a controversy between citizens of different States. Upon information and belief, the Plaintiff is, and was at the commencement of the action, a citizen of the State of New York. Defendant CVS ALBANY, L.L.C. i/s/h/a CVS PHARMACY, INC. is a domestic limited liability company having been registered in the State of New York. The citizenship of a limited liability company is determined by the citizenship of its members. *See Carden v. Arkoma Assocs.*, 494 U.S. 185, 110 S.Ct. 1015 (1990); *Quantlab Fin., LLC, Quantlab Tech. Ltd. (BVI) v Tower Research Capital, LLC*, 715 F Supp 2d 542 (S.D.N.Y. 2010). CVS PHARMACY, INC. is the sole member of Defendant CVS ALBANY, L.L.C. i/s/h/a CVS PHARMACY, INC. and is a foreign business corporation at all times having its principal place of

business at One CVS Drive, Woonsocket, Rhode Island, 02895, and is incorporated in the State of Rhode Island. As such, the Defendant, CVS ALBANY, L.L.C. i/s/h/a CVS PHARMACY, INC., has Rhode Island citizenship for purposes of diversity jurisdiction. CVS ALBANY, L.L.C. is wholly owned subsidiary of CVS Health Corporation. CVS Health Corporation has no parent corporation and no publicly held corporation owns 10 percent or more of CVS Health Corporation's stock. The principal place of business of CVS ALBANY, L.L.C. and CVS Health Corporation is One CVS Drive, Woonsocket, Rhode Island 02895. As such, Defendant, CVS ALBANY, L.L.C. i/s/h/a CVS PHARMACY, INC., has Rhode Island citizenship for purposes of diversity jurisdiction.

FIFTH: Upon information and belief, Plaintiff's amount in controversy exceeds the \$75,000.00 threshold exclusive of interest and costs. Plaintiff's Complaint does not specify the amount of damages because under New York State CPLR Section 3017(c), a plaintiff in a personal injury matter filed in the Supreme Court of the State of New York is not permitted to assert the damages amount in the Complaint. The Complaint sets forth general allegations that Plaintiff's damages were in excess of the jurisdictional limits of the lower courts. Furthermore, plaintiff claims that she sustained serious personal injuries, some of which are permanent in nature and plaintiff will continue to suffer physical pain and mental anguish. Plaintiff claims she has expended and become obligated, and in the future will become obligated, to expend sums of money for medical care and attention, in an effort to cure said injuries and to alleviate the pain and suffering. If these allegations are ultimately proven, all of which are expressly denied, then a verdict in this matter could exceed \$75,000.00. In addition, I conferred with plaintiff's counsel prior to filing this Petition. The plaintiff would not agree to cap damages at \$75,000.00 and represented that the

plaintiff underwent surgical intervention on her wrist. Accordingly, there exists original jurisdiction in the District Court of the United States as provided in 28 U.S.C. Section 1332.

SIXTH: The Defendant was purportedly served with a copy of the initial pleading setting forth the claim upon which this action is based on or about March 10, 2022. Therefore, this Notice of Removal is timely under 28 U.S.C. Section 1446(b).

SEVENTH: Pursuant to 28 U.S.C. Section 1446, a copy of the Summons and Verified Complaint, which constitutes all process, pleading or orders served or filed by the parties in the Supreme Court of the State of New York, is attached hereto as **Exhibit “A”** and incorporated herein by reference.

EIGHTH: By reason of the foregoing, Defendant CVS ALBANY, L.L.C. i/s/h/a CVS PHARMACY, INC. desires and is entitled to have this action removed from the Supreme Court of the State of New York, County of Nassau to the United States District Court for the Eastern District of New York, such being the district where this suit is pending.

NINTH: Concurrent with the filing of service and petition for removal, Defendant is serving this petition for removal upon the Plaintiff’s attorney and filing a copy of this petition for removal with the Clerk of the Court for the Supreme Court of the State of New York County of Nassau.

TENTH: This Petition for Removal is signed pursuant to Rule 11 of the Federal Rules of Civil Procedure.

WHEREFORE, and without waiver of any substantial or procedural defenses, defendant, CVS ALBANY, L.L.C. i/s/h/a CVS PHARMACY, INC., prays that the above-entitled action now pending against it in the Supreme Court of the State of New York, County of Nassau be removed therefrom that Court.

Dated: Garden City, New York
March 22, 2022

By: *Gary Muhlstock*
Gary Muhlstock, Esq.
CULLEN and DYKMAN, LLP
Attorneys for Defendant
CVS ALBANY, L.L.C. i/s/h/a
CVS PHARMACY, INC.
100 Quentin Roosevelt Blvd.
Garden City, New York 11530
516-357-3700
File No.: 23000-154 GPM

To:

Peter G. Lavrenchik, Esq.
THE LAW OFFICE OF PETER G. LAVRENCHIK, PLLC
Attorneys for Plaintiff
395 N. Service Road, Suite 302
Melville, New York 11747
631-338-5915